



November 1, 2006

The Honourable Vic Toews, P.C., Q.C., M.P.  
Minister of Justice and Attorney General of Canada  
284 Wellington Street, EMB 4<sup>th</sup> Floor  
Ottawa, Ontario  
K1A 0A6

Dear Minister:

**Re: Proceeds of Crime and the Legal Profession**

I write in response to your letter of October 24, 2006.

The Canadian Bar Association is in the process of analyzing Bill C-25, *Proceeds of Crime and Terrorist Financing Act*. As an initial observation, we congratulate your government on recognizing the importance of protecting solicitor-client privilege by explicitly removing the reporting requirement for lawyers.

The proposed legislation has a potential impact on several practice areas, not just criminal law. Several CBA groups are contributing to our comprehensive response to the Bill. As such, the Criminal Justice Section representatives at the November 3 meeting will not be in a position to comment specifically on the Bill. However, our position will be consistent with that on past initiatives, namely the core value of solicitor-client privilege must be protected in any legislative proposal to combat money-laundering. This is for the benefit of all Canadians, the integrity of our justice system and the rule of law.

The overwhelming majority of lawyers in Canada adhere to the highest legal and ethical standards. Like all citizens, lawyers are bound by the *Criminal Code* and other statutes, and are rightly exposed to criminal prosecution for any violation of the law. Lawyers are also subject to demanding professional codes of conduct and other law society requirements. The existing investigative tools and sanctions that are available against any lawyer who intentionally violates either the law or professional codes of conduct have been effective. Indeed, this appears to have been the case in the isolated example to which you refer.



You also suggest that lawyers unwittingly participate in criminal activity relating to money-laundering. Law societies have now voluntarily adopted regulations to prohibit acceptance of large amounts of cash. These regulations provide powerful investigative tools, including random audits. If such tools ever uncovered criminal activity, a reference could be made to the appropriate criminal authorities. Lawyers have shown their willingness to aid the government to fight money-laundering, but the proper approach is within the sphere of self-regulation.

The independence of the Bar and solicitor-client privilege are fundamental, foundational elements in the institutions, practices and beliefs of any free democracy. While our response to Bill C-25 has yet to be finalized, the CBA will steadfastly strive to uphold privacy rights, Charter values and core legal and ethical principles.

Our purpose is not to shield lawyers if they violate the law. Instead, our purpose is to ensure that lawyers can fulfill their paramount duty to their clients. Compelling a lawyer to assist the state by providing access to confidential or privileged client information is antithetical to that duty, and would undermine the fair and proper administration of justice. Our purpose is to preserve what has worked well to protect Canada's freedoms and the administration of justice - all clients' right to speak to their lawyers knowing that what they say will go no further. Canadian courts have rightly set solicitor-client privilege as a near absolute.

The CBA shares the government's goal of ensuring that lawyers are not complicit in money-laundering crimes. We will be pleased to meet with you, at your convenience, to review the sources cited in your letter, and discuss the values which must be protected by Bill C-25 and any other proposed legislation.

Yours truly,

*(original signed by J. Parker MacCarthy)*

J. Parker MacCarthy, Q.C.